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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of  
  
Federal-State Joint Board  
on Universal Service

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CC Docket No. 96-45

**REPORT AND ORDER**

**Adopted:** June 26, 1996 ; **Released:** June 26, 1996

By the Commission:

**Introduction**

1. In this Order, the Federal Communications Commission ("Commission") extends the duration of the indexed cap ("interim cap") on the rate of growth of the Universal Service Fund ("USF").<sup>1</sup> The interim cap was established to moderate the growth of the USF during the pendency of our broader rulemaking revising the Part 36 jurisdictional separations rules governing the USF.

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<sup>1</sup> 47 C.F.R. § 36.601(c). Under the interim cap, growth in the total level of the USF is indexed to growth in the total number of working loops nation-wide. Id.; see also Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Report and Order, 9 FCC Rcd 303, para. 20 (1993) (Interim Order). A working loop is "[a] revenue producing pair of wires, or its equivalent, between a customer's station and the central office from which the station is served." 47 C.F.R. Part 36, Appendix-Glossary.

2. On March 8, 1996, we issued a Notice of Proposed Rulemaking<sup>2</sup> in which we asked, inter alia, whether the interim cap should be extended<sup>3</sup> in light of the modifications to the existing system of providing universal service support mandated by the Telecommunications Act of 1996 ("1996 Act").<sup>4</sup> The Joint Board in CC Docket 96-45 ("96-45 Joint Board") has recommended extension of the interim cap until the new universal service rules adopted by the Commission acting upon the recommendation of the 96-45 Joint Board become effective.<sup>5</sup> For the reasons discussed below and those provided in the 96-45 Joint Board's Extension Recommendation, we adopt the recommendation of the 96-45 Joint Board and the interim rules set forth in the Appendix to this order.

### Background

2. The USF rules were adopted in 1984 to promote universally available telephone services at reasonable rates.<sup>6</sup> The rules provide interstate assistance to local exchange carriers ("LECs") whose average cost per loop<sup>7</sup> is substantially higher than the national average cost per loop. LECs with an average cost per loop above 115 percent of the national average cost per loop can allocate a specified percentage of these costs to the interstate jurisdiction.<sup>8</sup>

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<sup>2</sup> Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93 (released March 8, 1996).

<sup>3</sup> Id. at ¶ 40.

<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>5</sup> Federal-State Joint Board on Universal Service, Recommended Decision, FCC 96J-1 (released June 19, 1996) (Extension Recommendation).

<sup>6</sup> Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order, 96 FCC 2d 781 (1984).

<sup>7</sup> The costs used in determining a carrier's average cost per loop are specified in 47 C.F.R. § 36.621(a). Under these rules, certain costs are categorized as "loop" costs. These costs are added together and divided by the total number of working loops to determine the carrier's average loop cost. The number of working loops is defined in 47 C.F.R. § 36.611(a)(8).

<sup>8</sup> 47 C.F.R. § 36.631(c), (d). This allocation is in addition to the 25% interstate allocation allowed under the Commission's general jurisdictional separations rules. See 47 C.F.R. § 36.154(c).

3. In 1993, we initiated a rulemaking to examine and reevaluate the Part 36 jurisdictional separations rules governing USF assistance.<sup>9</sup> We proposed to implement an interim cap on the amount the USF could grow during the pendency of that proceeding, in order to prevent the erratic growth the fund had experienced in the past.<sup>10</sup> The Joint Board convened in CC Docket 80-286 ("80-286 Joint Board") subsequently recommended,<sup>11</sup> and the Commission adopted, an interim cap on USF growth that was to expire on January 1, 1996.<sup>12</sup> In December 1995, the 80-286 Joint Board recommended extending the cap for six months, at which time, it was anticipated, the rulemaking initiated in the Interim Notice would be completed.<sup>13</sup> Thereafter, the Commission issued a Report and Order extending the interim cap until July 1, 1996.<sup>14</sup>

4. On February 8, 1996, the Telecommunications Act of 1996 became law. The 1996 Act required the Commission to convene a Federal-State Joint Board,<sup>15</sup> which will provide a recommended decision on several universal service issues addressed in the Act.<sup>16</sup> The Act also imposed a strict schedule for action by the 96-45 Joint Board and the Commission. Pursuant to Section 254(a)(1), the 96-45 Joint Board must make a recommended decision to the Commission by November 8, 1996, and the Commission must issue its final rules by May 8, 1997.

### Discussion

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<sup>9</sup> Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking, 8 FCC Rcd 7114 (1993) ("Interim Notice")

<sup>10</sup> Id. at ¶¶ 11-15.

<sup>11</sup> Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision, 9 FCC Rcd 334 (1993).

<sup>12</sup> Interim Order, *supra*.

<sup>13</sup> Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision, FCC No. 95J-1 (released December 8, 1995).

<sup>14</sup> Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Report and Order, 11 FCC Rcd 2538 (1995).

<sup>15</sup> 47 U.S.C. § 254(a)(1).

<sup>16</sup> Id. at §§ 254, 214(e).

5. Summary of 96-45 Joint Board's Extension Recommendation. In its Extension Recommendation, the 96-45 Joint Board rejected arguments by parties who maintain that they will be unable to meet the new obligations imposed by the 1996 Act without additional support, which may not be available if the USF remains capped.<sup>17</sup> The 96-45 Joint Board explained that carriers will not be subject to additional universal service obligations under the 1996 Act until the 96-45 Joint Board's recommended decision and the Commission's final order are adopted.<sup>18</sup> Thus, the 96-45 Joint Board concluded that extending the interim cap until the effective date of the new universal service rules will not impede the carriers' ability to comply with the 1996 Act.<sup>19</sup>

6. Furthermore, the 96-45 Joint Board determined in its Extension Recommendation that retaining the interim cap is necessary to protect against extreme increases in the USF during the period the 96-45 Joint Board and Commission are in the process of implementing the universal service provisions of the 1996 Act.<sup>20</sup> The 96-45 Joint Board also noted that the National Exchange Carrier Association Inc.'s ("NECA's") most recent projections indicate that the 1996 USF will be below the level allowed by the interim cap.<sup>21</sup> In sum, the 96-45 Joint Board recommended extending the interim cap until the rules implementing the new universal service regime mandated by the 1996 Act become effective.<sup>22</sup>

7. Discussion. We agree that the interim cap should remain in place until our final rules implementing the universal service provisions of the 1996 Act take effect. By extending the duration of the cap, we seek to promote an orderly transition to the new system of universal service that will encompass all of the pertinent requirements of the 1996 Act. We note, as the 96-45 Joint Board did in its Extension Recommendation,<sup>23</sup> that the 1996 Act imposes new requirements for universal service support.<sup>24</sup> We emphasize the 96-45 Joint Board's conclusion

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<sup>17</sup> Extension Recommendation at ¶ 10.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at ¶ 9.

<sup>21</sup> Id. at ¶ 10.

<sup>22</sup> Id. at ¶ 12.

<sup>23</sup> Id. at ¶ 4.

<sup>24</sup> Id. at ¶ 4. See 47 U.S.C. § 254(b), (h)(1).

that the provisions of the 1996 Act altering the universal service support mechanisms do not impose any new obligations on carriers until the 96-45 Joint Board recommends, and we adopt, rules implementing those statutory provisions.<sup>25</sup>

8. We conclude that NECA's current projections, which suggest that the USF could remain below the cap level, do not demonstrate that the cap should be eliminated. The 96-45 Joint Board and this Commission are currently considering modifications to the way universal service support is collected from telecommunications providers and distributed to those carriers who serve high cost areas. We concur with the 96-45 Joint Board's determination in its recommended decision that retaining the interim cap is essential to facilitate an orderly transition to the new universal service regime mandated by the 1996 Act.

9. Finally, we are extending the interim cap on the USF only until our final universal service rules become effective. The duration of the extension is a reflection of the strict statutory schedule imposed by the 1996 Act and the need for an orderly transition to the new rules. For these reasons and those provided in the 96-45 Joint Board's Extension Recommendation, we extend the duration of the interim cap until our final universal service rules, to be adopted by May 8, 1997, become effective. In addition, for the same reasons, we find good cause for making the rule amendments effective on less than 30 days notice<sup>26</sup> and shall require that the interim rules become effective on July 1, 1996.

#### **Procedural Issues**

10. Regulatory Flexibility Analysis. We certify that the Regulatory Flexibility Act is not applicable to the rule changes we are adopting in this proceeding. These rule changes will not result in a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Entities subject to the rule changes are engaged in the provision of local exchange and exchange access telecommunications services. These entities are generally large corporations, affiliates of large corporations, or are dominant in their fields of operation, and, thus, are not "small entities" as defined by the Act.<sup>27</sup> We are nevertheless committed to reducing the regulatory burdens on small communications services companies whenever possible, consistent with our other public interest responsibilities. The Secretary shall send a copy of this Report and Order to the Chief Counsel for Advocacy of

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<sup>25</sup> Extension Recommendation at ¶ 10.

<sup>26</sup> See 5 U.S.C. § 553(d)(3).

<sup>27</sup> 15 U.S.C. § 632(a)(1).

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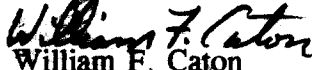
the Small Business Administration in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§601, *et seq.* (1981).

**Ordering Clauses**

11. Accordingly, pursuant to Sections 1, 4(i), 221(c), 214(e), 254 and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 221(c), 214(e), 254 and 410(c), IT IS ORDERED that Part 36 of the Commission's Rules and Regulations, 47 C.F.R. Part 36, Subpart F - Universal Service Fund, IS AMENDED as shown in the Appendix to this Report and Order; effective July 1, 1996.

12. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this Report and Order, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §§601 *et seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

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**APPENDIX**

Part 36 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 36--JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES.**

1. The authority citation for Part 36 continues to read as follows:

**Authority:** 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 403 and 410.

2. Section 36.601 is amended by amending paragraph (c) to read as follows:

**§ 36.601 General.**

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(c) During an interim period commencing on January 1, 1994, and terminating on the effective date of the Commission's universal service rules, to be adopted in CC Docket 96-45 on or before May 8, 1997, the annual amount of the total Universal Service Fund shall not exceed the amount of the total Universal Service Fund for the immediately preceding calendar year, increased by a rate equal to the rate of increase in the total number of working loops nationwide during the calendar year preceding the June filing. The total Universal Service Fund shall consist of the Universal Service expense adjustments, including amounts calculated pursuant to §§ 36.612(a) and 36.631. The rate of increase in total working loops shall be based upon the difference between the number of total working loops on December 31 of the year preceding the June filing and the number of total working loops on December 31 of the second year preceding that filing, both calculated pursuant to § 36.611(a)(8).

3. Section 36.622 is amended by amending paragraph (c) to read as follows:

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**§ 36.622 National and study area average unseparated loop costs.**

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(c) During an interim period commencing on January 1, 1994, and terminating on the effective date of the Commission's universal service rules, to be adopted in CC Docket No. 96-45 on or before May 8, 1997, the National Average Unseparated Loop Cost per Working Loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) An amount calculated to produce the maximum total Universal Service Fund allowable pursuant to § 36.601(c).